

PATENT APPLICATION

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of

Docket No: Q74306

Jean-Claude HAUER, et al.

Appln. No.: 10/684,464

Group Art Unit: 3633

Confirmation No.: 4684

Examiner: Basil S. KATCHEVES

Filed: October 15, 2003

For: CLOSING DEVICE

RESPONSE TO NOTICE OF NON-COMPLIANT APPEAL BRIEF

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 C.F.R. § 41.37, Appellant submits the following:

In response to the Notification of Non-Compliant Appeal Brief mailed October 14, 2008, Applicant respectfully submits an Amended Brief to correct the deficiencies in the original Brief. Applicant respectfully submits that the Amended Appeal Brief complies with the rules and therefore requests an Examiner's Answer.

Although Applicant believes that no fee is due, the USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

/John M. Bird/

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

John M. Bird
Registration No. 46,027

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: October 22, 2008

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AMENDED APPEAL BRIEF UNDER 37 C.F.R. § 41.37

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In accordance with the provisions of 37 C.F.R. § 41.37, Appellant submits the following:

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I. REAL PARTY IN INTEREST

The real party in interest is SAINT-GOBAIN PAM, by virtue of an assignment recorded by the Assignment Branch of the U.S. Patent and Trademark Office on February 26, 2004, at Reel 015016, Frame 0105.

II. RELATED APPEALS AND INTERFERENCES

To the knowledge and belief of Appellant, the Assignee, and the undersigned, there are no other appeals or interferences before the Board of Appeals and Interferences (“Board”) that will directly affect or be affected by the Board’s decision in the instant Appeal.

III. STATUS OF CLAIMS

Claims 1-6, 8-14, 18-21 and 25-34 are all the claims pending in the application.

Claims 7, 15-17, 22-24 are cancelled.

The Examiner has objected to claims 4, 5, 8, 13, 14, 20, 21, 29, 33 and 34.

Claims 1-3, 6, 9-12, 18, 19, 25-28, and 30-32 are rejected and are the subject of this appeal.

IV. STATUS OF AMENDMENTS

The Appendix included with this Brief sets forth the claims involved in the appeal and reflects the claims as presented in the Amendment Under 37 C.F.R. § 1.111 filed on March 6, 2007. All Amendments have been entered.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

Each of the claims is directed to a closing device including a frame, a cover, and a plug.

Independent Claim 1

Referring to the features of the exemplary embodiment, which is shown in FIGS. 1 and 2, the closing device that provides support for claim 1 includes a frame 4 defining an access opening 10. A cover 6 is movable relative to the frame 4 between an open position (i.e., FIG. 2) and a closed position (i.e., FIG. 1).¹

The frame 4 includes a frame hinge knuckle 18 with a hinge surface 38 and a pass-through hinge knuckle opening 40.² As shown in FIG. 1, the pass-through hinge knuckle opening 40 is located between an outer recess 19³ open to the *outer side* of the frame 4 and an inner recess 50⁴ open to the *inner side* of the frame 4.

The cover 6 includes a cover hinge knuckle 20 that cooperates with the frame hinge knuckle 18.⁵ The cover hinge knuckle 20 includes a pivot 24 extending into the outer recess 19 when the cover 6 is in the closed position (i.e., FIG. 1). The inner recess 50 of the frame includes an opening.

¹ See original specification at page 4, lines 4-10.

² See original specification at page 5, lines 2-13.

³ See original specification at page 4, lines 19-20.

⁴ See original specification at page 5, lines 16-20.

⁵ See original specification at page 4, lines 16-20.

An inserted plug 52 is positioned in the inner recess 50. As shown in FIG. 1, the plug 52 closes the opening of the inner recess 50, thus sealing off the inner side of the frame hinge knuckle 18 from the outside. As also shown in FIG. 1, the plug 52 prevents gravel 70 and/or most rain water from entering a pipe 11 provided underneath the cover 6.⁶ As shown in FIG. 1, the plug 52 is located below the cover hinge knuckle 20.

Dependent Claims 2 and 26

The plug 52 can be made from a elastically deformable material, such as an elastomer.⁷

Independent Claim 27

Referring to the features of the exemplary embodiment, which is shown in FIGS. 1 and 2, the closing device that provides support for claim 27, like that of claim 1, includes a frame 4, a cover 6, and a plug 52. The frame 4 is disposed in an access opening 10 and includes a hinge receiving portion 18. The cover 6 closes the access opening 10 and includes a hinge portion (e.g., cover hinge knuckle 20), which is received by the hinge receiving portion (e.g., frame hinge knuckle 18).⁸

A plug 52 *that is separate from the cover 6* is disposed below the hinge portion (e.g., cover hinge knuckle 20).

The hinge receiving portion (e.g., frame hinge knuckle 18) includes an outer recess 19, an inner recess 50, and a pass-through opening 40. The hinge portion of the cover (e.g., cover hinge

⁶ See original specification at page 7, lines 9-15.

⁷ See original specification at page 7, lines 1-4.

⁸ See original specification at page 4.

knuckle 20) is received in the outer recess 19, and the plug 52 is disposed in the inner recess 50. The plug 52 substantially closes an opening of the inner recess 50 at least when the cover 6 is closed (i.e., position in FIG. 1). This prevents gravel 70 and/or rain water from entering a pipe 11 provided underneath the cover 6.

Independent Claim 30

Referring to the features of the exemplary embodiment, which is shown in FIGS. 1 and 2, the closing device that provides support for claim 30, like that of claims 1 and 27, includes a frame 4, a cover 6, and a plug 52. The frame 4 defines an access opening 10. The cover 6 is movable between a closed position (i.e., FIG. 1) and an open position (i.e., FIG. 2). The frame 4 includes a frame knuckle 18 that receives an end of the cover 6.

A plug 52 is disposed in a recess 50 below the end of the cover 6. As shown in FIG. 1, when the cover 6 is closed, the plug 52 closes an opening in the recess 50. This prevents gravel and/or most rain from entering a pipe 11 underneath the cover 6.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether claims 1, 3, 6, 9, 12, 19, 27, 28, 30, and 31 are anticipated under 35 U.S.C. § 102(b) by U.S. Patent No. 2,012,885 to Lovatt.

2. Whether claims 2, 10, 11, 18, 25, 26 and 32 are obvious under 35 U.S.C. § 103(a) as being unpatentable over Lovatt.

VII. ARGUMENT

1. Rejection of claims 1, 3, 6, 9, 12, 19, 27, 28, 30, and 31 as being anticipated under 35 U.S.C. § 102(b) by U.S. Patent No. 2,012,885 to Lovatt.

Claim 1

With respect to independent claim 1, Applicant respectfully requests the Board to reverse this rejection because Lovatt does not disclose the claimed closing device including an inserted plug that is provided in an inner recess of the frame knuckle and closes off an opening in the inner recess.

Lovatt discloses a sidewalk door including a cover 7 provided in a frame 3.⁹ As shown in FIG. 5 of Lovatt, the cover 7 includes a hinge knuckle 43. The hinge knuckle 43 includes a straight shoulder 46 adapted to fit flatwise against a shoulder 48 of the frame 3 and a hook 48 that engages a surface 49 of the frame 3.¹⁰

The Examiner asserts that the hook 48 of Lovatt's hinge knuckle 43 corresponds to the recited "plug." However, Lovatt's hook 48 cannot reasonably be considered as corresponding to the recited "plug" because the hook 48 is not a structure that is inserted into an inner recess of the frame 3 and is not a structure of that is below the cover's hinge knuckle 43. Instead, the hook 48 is a part of the knuckle 43 of the cover 7 and is a structure of the cover 7.

Thus, Applicant respectfully requests the Board to reverse the rejection of independent claim 1.

⁹ See Lovatt at FIG. 5.

¹⁰ See Lovatt at page 2, col. 2, lines 36-50.

Claim 27

With respect to independent claim 27, Applicant respectfully requests the Board to reverse this rejection because Lovatt does not disclose the claimed closing device including an plug that separate from the cover and is disposed below the hinge portion of the cover.

The Examiner asserts that the hook 48 of Lovatt's hinge knuckle 43 corresponds to the recited "plug." However, Lovatt's hook 48 cannot reasonably be considered as corresponding to the recited "plug" because the hook 48 is not a structure that is separate from the cover 7 and disposed below a hinge of the cover 7. Instead, the hook 48 is a part of the knuckle 43 of the cover 7.

Thus, Applicant respectfully requests the Board to reverse the rejection of independent claim 27.

Claim 30

With respect to independent claim 30, Applicant respectfully requests the Board to reverse this rejection because Lovatt does not disclose the claimed closing device including an plug that is disposed in a recess below the end of the cover.

The Examiner asserts that the hook 48 of Lovatt's hinge knuckle 43 corresponds to the recited "plug." However, Lovatt's hook 48 cannot reasonably be considered as corresponding to the recited "plug" because the hook 48 is not provided in a recess below an end of the cover. Instead, the hook 48 is a part of the knuckle 43 of the cover 7.

Thus, Applicant respectfully requests the Board to reverse the rejection of independent claim 30.

Claims, 3, 6, 9, 12, 19, 28, and 31

Applicant respectfully requests the Board to reverse the rejection of dependent claims 3, 6, 9, 12, 19, 28, and 31 at least because of their dependency from claims 1, 27, or 30.

2. Rejection of claims 2, 10, 11, 18, 25, 26 and 32 as being obvious under 35 U.S.C. § 103(a) by U.S. Patent No. 2,012,885 to Lovatt.

Claim 2

Applicant respectfully requests the Board to reverse the rejection of dependent claim 2 at least because of its dependency from claim 1 and because a plug that is made from a deformable material would not have been obvious.

The Examiner asserts that it would have been obvious to modify Lovatt's hook 48 so that is made from a deformable material in order to create a tighter seal. However, since Lovatt's hook 48 is merely a part of the knuckle 43, the material of the hook 48 is made of steel, like the other parts of Lovatt's cover and frame.¹¹ There is no reason of record to modify Lovatt's knuckle 43 in this manner.¹²

In fact, the only portion of Lovatt's sidewalk door that is disclosed as being made of an elastically deformable material is the gasket 18, which is made of rubber.¹³ However, the gasket 18 is not disposed below the cover hinge knuckle 43 and does not close off an opening in an inner recess of Lovatt's frame 3.

¹¹ See Lovatt at page 2, col. 2, lines 66-74.

¹² See *KSR v. Teleflex*, 82 USPQ2d 1385, 1396, 127 S.Ct. 1727, 167 L.Ed.2d 705 (U.S. 2007), quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329 (CA Fed. 2006) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”).

¹³ See Lovatt at page 2, col. 1, lines 36-37.

Claim 26

Applicant respectfully requests the Board to reverse the rejection of dependent claim 26 at least because of its dependency from claims 1 and 2 and because a plug that is made of an elastomer would not have been obvious. That is, as discussed above, there is no reason to provide the knuckle 43, and thus the plug 48, of Lovatt in a material other than that of the cover 7, i.e., steel.

Claims 10, 11, 18, 25, and 32

Applicant respectfully requests the Board to reverse the rejection of dependent claims 10, 11, 18, 25, and 32 at least because of their dependency from claims 1, 27, or 30.

VIII. CONCLUSION

Unless a check is submitted herewith for the fee required under 37 C.F.R. §41.37(a) and 1.17(c), please charge said fee to Deposit Account No. 19-4880.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

/John M. Bird/

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

John M. Bird
Registration No. 46,027

Date: October 22, 2008

CLAIMS APPENDIX

CLAIMS 1-3, 6, 9-12, 18, 19, 25-28, and 30-32 ON APPEAL:

1. A closing device, comprising:

a frame (4) defining an access opening 10 and a cover (6) for the frame which is movable relative to the frame between an open and a closed position of opening and closing the access opening 10 defined by the frame, the frame including an inner side and an outer side, the frame including a frame hinge knuckle (18), the frame hinge knuckle (18) having a hinge surface (38) and a pass-through hinge knuckle opening (40) that is located between an outer recess open to the outer side of the frame and an inner recess open to the inner side of the frame, said cover including a cover hinge knuckle that cooperates with the frame hinge knuckle and comprises a pivot extending into the outer recess when the cover is in the closed position, wherein the inner recess comprises an opening and the device also comprises an inserted plug (52) positioned in the inner recess (50) to close the opening of the inner recess and which makes the inner side of the frame hinge knuckle (18) appreciably sealed off from the outside and wherein the plug is located below the cover hinge knuckle.

2. Device according to claim 1, characterized in that the plug (52) is made from an elastically deformable material.

3. Device according to claim 1, characterized in that the plug (52) comprises means of evacuating (62) dirt (70) accumulated on the outer side of the plug (52).

6. Device according claim 1, characterized in that the hinge knuckle opening (40) delimits at least a blocking surface (42, 44) of the cover (6) in an open position.

9. Device according to claim 1, characterized in that the device is a manhole (2).

10. Device according to claim 2, characterized in that the plug (52) comprises means of evacuating (62) dirt (70) accumulated on the outer side of the plug (52).

11. Device according to claim 2, characterized in that the hinge knuckle opening (40) delimits at least a blocking surface (42, 44) of the cover (6) in an open position.

12. Device according to claim 3, characterized in that the hinge knuckle opening (40) delimits at least a blocking surface (42, 44) of the cover (6) in an open position.

18. Device according to claim 2, characterized in that the device is a manhole (2).

19. Device according to claim 3, characterized in that the device is a manhole (2).

25. Device according to claim 2, wherein the plug is made of a single piece.

26. Device according to claim 2, wherein the plug is made of an elastomer.

27. A closing device, comprising:

- a frame disposed in an access opening and including a hinge receiving portion;
- a cover which closes the access opening and comprises a hinge portion which is received by the frame at said hinge receiving portion; and
- a plug separate from said cover and disposed below the hinge portion of the cover;

wherein the hinge receiving portion includes an outer recess, an inner recess and a pass-through opening through which the outer recess and the inner recess communicate; and

wherein the hinge portion of the cover is received in the outer recess of the hinge receiving portion and said plug is disposed in the inner recess and substantially closes an opening of the inner recess at least when the cover is closed.

28. A device according to claim 27, wherein said plug is capable of blocking dirt or gravel.

30. A closing device, comprising:

- a frame defining an access opening;
- a cover which is movable between a closed position of closing the access opening and an open position of leaving the access opening open; and
- a plug;

wherein the frame comprises a frame knuckle which receives an end of the cover;

wherein the plug is disposed in a recess below the end of the cover; and

wherein, as least when the cover is in the closed position, the plug substantially closes an opening in the recess.

31. A closing device according to claim 30, wherein the frame knuckle comprises an upper recess and a lower recess and there is an opening between the upper recess and the lower recess;

wherein, at least when the cover is in the closed position, the end of the cover is received in the upper recess; and

wherein the plug is disposed in the lower recess.

32. A closing device according to claim 31, wherein the plug is an elastomer.

EVIDENCE APPENDIX:

Pursuant to 37 C.F.R. § 41.37(c)(1)(ix), submitted herewith are copies of any evidence submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132 or any other evidence entered by the Examiner and relied upon by Appellant in the appeal.

None

RELATED PROCEEDINGS APPENDIX

Submitted herewith are copies of decisions rendered by a court or the Board in any proceeding identified about in Section II pursuant to 37 C.F.R. § 41.37(c)(1)(ii).

None